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10/801,735	03/16/2004	Stacy Barrows	650033.15148	1838

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EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/801,735

Applicant(s)

BARROWS, STACY

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,5 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4,6 and 8-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “first” and “second means for returning the roller” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 8 and 14 are objected to because of the following informalities:

In claim 8, line 1, is the phrase "the exercise device of claim 3". Since claim 3 has been deleted and it appears that claim 8 is dependent on claim 13, the examiner will assume that claim 8 is dependent on claim 13 to expedite the prosecution.

In claim 14, line 1, is the phrase "the exercise device of claim 14". Since it appears that claim 14 is dependent on claim 13, the examiner will assume that claim 14 is dependent on claim 13 to expedite the prosecution

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 6, 8-13, 15-17 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 9 recites the limitation "the curvatures" in line 6, claim 10 recites the limitation "the center of gravity" in lines 1-2 and 5, claim 13 recites the limitation "the curvature" in lines 8 and 9, claim 22 recites the limitations "the curvature" in lines 6 and 7, claim 24 recites the limitations "the curvature" in lines 4-5 and claim 25 recites the limitations "the radius" in lines 3 and 4. There is insufficient antecedent basis for these limitations in the claims. Claims 10-12, 2, 4, 6, 8, 14, 23 and 25 are also rejected for being dependent on rejected base claims.

4. In claim 15, it is unclear as to what the "first" and "second means" are or refer to. Furthermore, each and every element of the claim must be shown in the figures of the

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application. Claims 16 and 17 are also rejected for being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

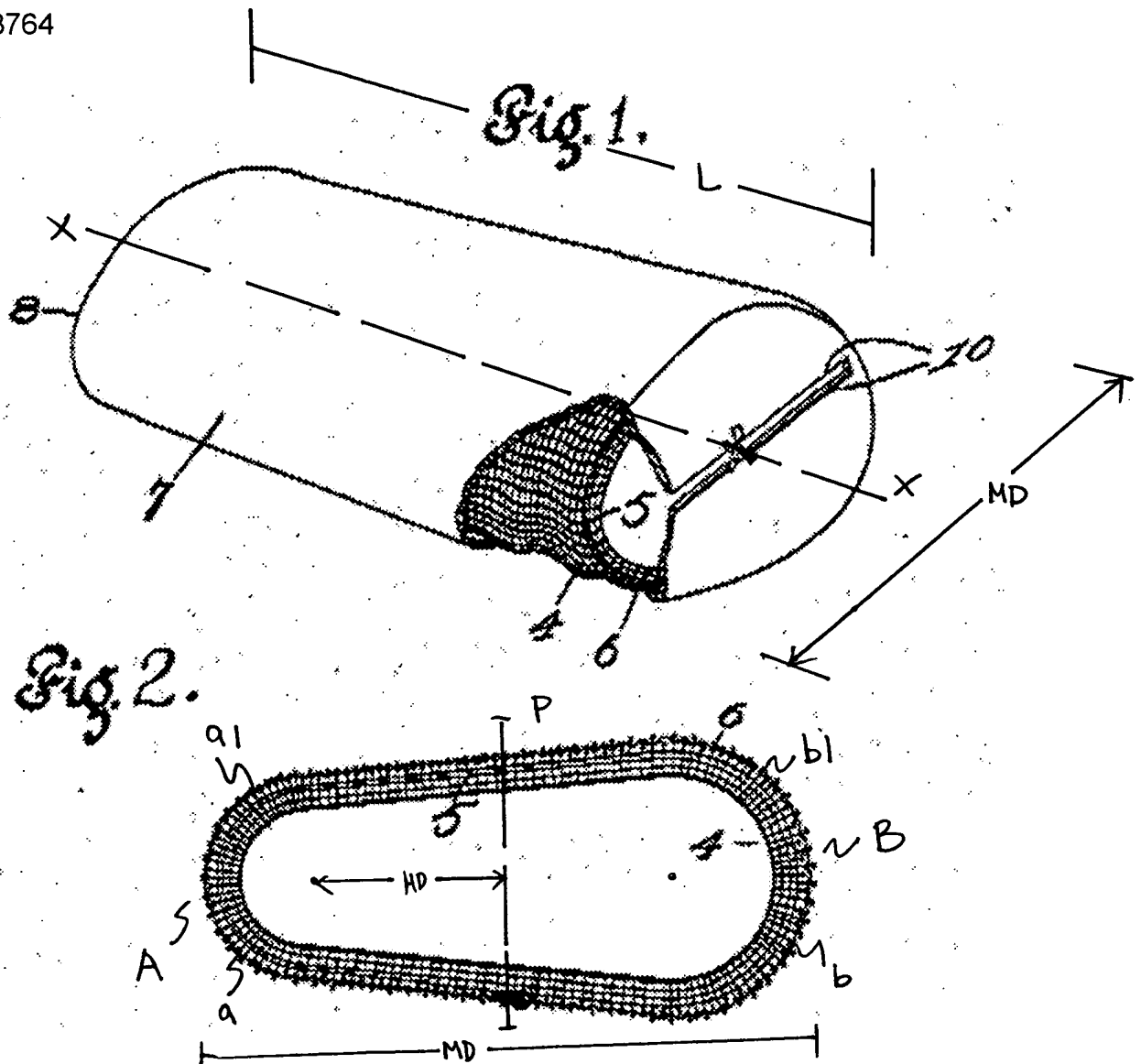
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ranz (1,274,595).

5. As to claim 9, Ranz discloses a device comprising an elongated roller formed of a compressible material, a longitudinal axis (X) and a length (L) in the direction of the axis, a sectional plane (P) parallel to the axis wherein the plane divides the roller into first (A) and second (B) portions with a first curved and convex surface (a) on the first portion and second curved and convex surface (b) on the second portion, the curvatures on the first and second surfaces being sufficiently curved to allow the first and second roller surfaces to roll along a generally horizontal surface, the roller having a length in the direction of the axis, the curvature of the curved first portion being different than the curvature of the curved second portion and the length being substantially greater than the maximum distance between the first and second surfaces of the roller (see Figs. 1 & 2 below).



6. As to claim 22, Ranz discloses a device comprising an elongated roller formed of a compressible material, a wholly convex outer surface, an axis, a length in the direction of the axis, a wholly convex, curved first surface (a1) on one side of the axis and wholly convex curved second surface (b1) on the other side of the axis, the first and second surfaces intersecting each other and the first surface having a curvature that is different from the second surface's curvature (see Fig. 1 & Page 1, lines 49-57).

7. As to claim 24, Ranz discloses a device comprising an elongated roller formed of a compressible material, a wholly convex outer surface, an axis, a length in the direction

of the axis, a curved first surface on one side of the axis and a curved second surface on the other side of the axis, the first surface having a curvature that is different from the second surface's curvature, the length (L) being substantially greater than the maximum distance (MD) between the first and second surface and the maximum distance between the surfaces are at least as great as half the distance (HD) between the centers of curvature of the first and second surfaces (see Fig. 1 & Page 1, lines 49-57 and Fig. 2 above).

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Koshaba (D435,751).

8. As to claim 18, Koshaba discloses a roller comprising a first and second opposing elongated curved surfaces (a', b' respectively) wherein the first surface has a curvature extending about a first axis (A1) and the second surface has a curvature extending about a second axis (A2), the curvature of the first surface being different than the curvature of the second surface, the roller normally resting along a first part (P1) of the first surface when the first part of the first surface is on a horizontal surface, the roller being capable, when force is applied to the roller, of being rolled from the first part of the first surface when the surface is on the horizontal surface and returning to the first part of the first surface when force is removed from the roller, the roller normally resting along a first part (P2) of the second surface when the first part of the second surface is on a horizontal surface, the roller being capable, when force is applied to the roller, of being rolled from the first part of the second surface when the second surface

is on the horizontal surface and returning to the first part of the second surface when force is removed from the roller (see Fig. 2 below).

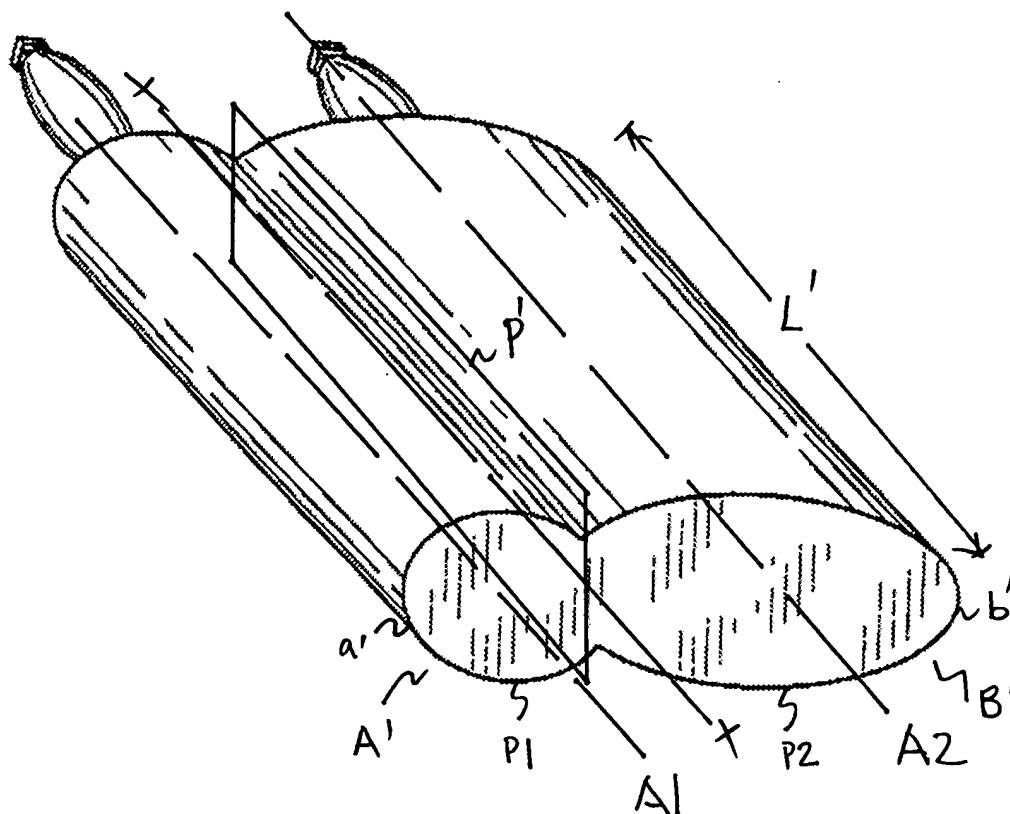


FIG. 2

9. As to claims 19 and 20, Koshaba discloses a device as described above (see discussion of claim 18). Koshaba also discloses that the first and second surfaces intersect each other, and the first and second surfaces are wholly convex (see Fig. 2 above).

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Karr (1,468,268).

10. As to claim 21, Karr discloses a device comprising an elongated roller of a material that compresses under weight but returns to its shape when weight is released



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wherein the roller has a central plane and first and second curved convex surfaces on opposite sides of the central plane, the first and second curved surfaces intersecting each other along two, opposite sides of the roller, and the roller is stable when either curved surface is on a horizontal surface and no force is applied to the roller (see Fig. 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshaba (D345,751) in view of Ranz (1,274,595).

11. As to claim 9, Koshaba disclose a device comprising an elongated roller, a longitudinal axis (X') and a length in the direction of the axis (L'), a sectional plane (P') parallel to the axis wherein the plane divides the roller into first (A') and second (B') portions with a first curved and convex surface (a') on the first portion and second curved and convex surface (b') on the second portion, the curvatures on the first and second surfaces being sufficiently curved to allow the first and second roller surfaces to roll along a generally horizontal surface, the roller having a length in the direction of the axis, the curvature of the curved first portion being different than the curvature of the curved second portion and the length being substantially greater than the maximum distance between the first and second surfaces of the roller (see Fig. 2 below).

Koshaba does not disclose that the roller is formed of a compressible material. Ranz discloses a similarly elongated pillow formed of a compressible material (see Fig. 1 and Page 1, lines 8-16). At the time of the invention it would have been obvious to a person of ordinary skill in the art to make Koshabas' pillow from a compressible material to provide additional comfort to a user.

12. As to claim 10, Koshaba and Ranz disclose a modified device as described above (see discussion of claim 9). Koshaba also disclose that the roller inherently includes a center of gravity such that the roller will remain on the first portion when a user positions the first portion on a horizontal surface and rolls the roller along a substantial portion of the first portion and the center of gravity will remain on the first portion when a user positions the first portion on the horizontal surface and rolls the roller along a substantial portion of the first portion (see Fig. 2).

13. As to claims 11 and 12, Koshaba and Ranz disclose a modified device as described above (see discussion of claim 9). Koshaba also disclose that the first and second surfaces intersect each other, and the first and second surfaces are wholly convex (see Fig. 2).

14. As to claims 13 and 14, Koshaba disclose a device comprising an elongated roller having first (A1) and second axis (A2), a length (L') and a sectional plane (P') parallel to the first and second axes wherein the plane divides the roller into first (A') and second (B') portions with the first portion having a first convex outer surface (a') that is curved about the first axis and the second portion having a second convex outer surface (b') that is curved about the second axis, the first and second surfaces are

wholly convex and intersect each other, the length being substantially greater than the distance between the first and second axes, and the curvature of the first surface of the roller being different than the curvature of the second surface of the roller (see Fig. 2 below). Koshaba does not disclose that the roller is formed of a compressible material. Ranz discloses a similarly elongated pillow formed of a compressible material (see Fig. 1 and Page 1, lines 8-16). At the time of the invention it would have been obvious to a person of ordinary skill in the art to make Koshabas' pillow from a compressible material to provide additional comfort to a user.

15. As to claim 8, Koshaba and Ranz disclose a modified device as described above (see discussion of claim 13). Koshaba further discloses that the roller is adapted to rest normally only on the top or bottom surface (when the device is propped against a headboard).

### ***Response to Arguments***

16. Applicant's arguments filed October 19, 2005 have been fully considered but they are not persuasive. First, applicant has not provided a persuasive argument as to why the Ranz pillow cannot be rolled. Similar to the instant invention, a force must be applied to roll Ranz's pillow. Also, applicant asserts that Ranz includes flat faces. Although the figures appear to disclose flat surfaces, Ranz discloses that the shape can be wholly rounded, elliptical or oval as shown in Figure 1 and discussed in Page 1, lines 49-57; thus the curved surfaces "intersect". Applicant further argues that the length of Ranz's pillow is not substantially greater than the maximum distance between the first and second surfaces. Ranz shows that the distance is at least twice as long as the


maximum distance between the surfaces. While the applicant may contend that Ranz is not elongated, applicant has not shown that the length is not substantially greater than the distance between the surfaces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 6, 2006

  
**Stephen K. Cronin**  
Primary Examiner